

**WARRANTY AGREEMENT BETWEEN
THE CITY OF FRISCO AND HANSON PRESSURE PIPE, INC.**

This Warranty Agreement (this "Agreement") is made and entered into by and between the City of Frisco, Texas (the "City"), a Home-Rule Municipal Corporation, with offices located at 6101 Frisco Square Blvd., Frisco, Texas 75034, and Hanson Pressure Pipe, Inc. ("Hanson"), an Ohio corporation, with a local office at 300 East John Carpenter Freeway, Suite 1645, Irving, Texas 75062, on this ___ day of January, 2009. The City and Hanson may be collectively referred to as the ("Parties"). The Parties hereby agree as follows:

I. RECITALS

WHEREAS, by contract dated December 20, 2007 by and between the City and S.J. Louis Construction of Texas, Ltd from Mansfield, Texas ("S.J. Louis"), for a price of four million one hundred twenty three thousand seven hundred forty one and 34/100 Dollars (\$4,123,741.34) (the "Contract"), S.J. Louis agreed to provide the labor, equipment and materials necessary to construct a 42-inch steel pipeline for a water transmission main from Preston Road to Coit Road (the "Project"); and

WHEREAS, S.J. Louis purchased the material for the steel pipeline from Hanson, and began work on the construction of the waterline on February 6, 2008, with a contract completion date of February 14, 2009; and

WHEREAS, the City's consulting engineer, CH₂M Hill of Dallas, Texas, discovered that the steel pipe HSLAS Grade 45K as supplied by Hanson to S.J. Louis for the Project (the "Supplied Pipe") was not the grade of steel that was specified under the Contract, steel pipe SS Grade 36K (the "Specified Pipe"); and

WHEREAS, the City agreed to accept the Supplied Pipe on the condition that Hanson warrant its material as suitable for the use specified in the Contract, pay for any and all repairs during the Warranty Period and indemnify and defend the City from all claims as described by the indemnification provision contained herein; and

WHEREAS, the City may seek a declaratory judgment to determine the relative responsibilities of the Parties with regard to any defective or inferior material used in construction of the Project. In an effort to resolve these concerns, to avoid the expense of proceeding to obtain a declaratory judgment, and for other consideration set out herein, Hanson has agreed to provide the warranty and indemnify and defend the City from all claims as described by the indemnification provision contained herein; and

WHEREAS, this Agreement, negotiations leading to the Agreement, the payment of consideration therefore, and the contents of this Agreement are not intended to constitute and shall not constitute any admission or concession of any kind by any party as to claims and disputes related to the quality of work, material, or labor involved in the construction of the Project.

NOW, THEREFORE, in consideration of the four million, one hundred, twenty three thousand, seven hundred and forty one and 34/100 Dollars (\$4,123,741.34) paid by the City to S.J. Louis (and then to Hanson as the material supplier of pipe for the Project), the acceptance by the City of the Supplied Pipe even though it differs from the Specified Pipe, the following mutual promises, covenants, and agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all Parties, Hanson agrees to provide the Warranty and Indemnification as specified herein;

II. WARRANTY

From the effective date of this Agreement through February 14, 2029 (the "Warranty Period"), Hanson warrants that the Supplied Pipe is suitable for the use specified in the Contract and shall perform as an equivalent to the Specified Pipe (the "Warranty"). The Warranty provided herein is not conditioned upon any required maintenance of the City. This Warranty shall not apply to damages arising from: (i) storm, flood, hurricane, earthquake, tornado, lightening, fire or other Acts of God; (ii) vandalism, war, civil unrest or other accidental or intentional events; (iii) deterioration from the effects of pollution if such pollution would have deteriorated the Specified Pipe to the same degree; or (iv) actions of or materials provided by any person other than Hanson.

III. REMEDIES IF SUITABILITY ISSUE ARISES

A. **First Ten Year Warranty Period.** If during the first ten years of the Warranty Period the Supplied Pipe fails to perform in any material respect as the Specified Pipe would have under the same conditions (a "Suitability Issue"), and the City notifies Hanson of the Suitability Issue in writing, Hanson shall, at its sole cost and expense, make repairs to and/or replace (if repairs are not practicable) the Supplied Pipe, so as to bring the Supplied Pipe to a condition that complies with acceptable industry standards. In making such repairs and/or replacements, Hanson shall also be required to pay for repair of the ground surface, pavement areas, sidewalks, and other structures/areas that were disturbed or damaged by the failure of and/or the repair/replacement of the Supplied Pipe. Hanson shall also pay for all necessary labor and equipment costs directly associated with the repairs and replacements described herein. Under no circumstance, however, shall Hanson's total liability during the first ten years of the Warranty Period exceed two million five hundred thousand and NO/100 dollars (\$2,500,000.00).

B. **Remaining Warranty Period.** If a Suitability Issue arises during the second ten years of the Warranty Period (the "Remaining Warranty Period"), and the City notifies Hanson of the Suitability Issue in writing, Hanson shall, at its sole cost and expense, make repairs to and/or replace (if repairs are not practicable) the Supplied Pipe so as to bring the Supplied Pipe to a condition that complies with acceptable industry standards. During the Remaining Warranty Period, however, Hanson shall NOT be required to repair and/or replace areas of the ground surface, pavement areas, sidewalks, or other structures/areas that were disturbed or damaged by the failure of and/or the repair/replacement of the Supplied Pipe. Nor shall Hanson be responsible for excavation, installation, labor or equipment cost associated with such repairs and replacements. Under no circumstance shall Hanson's total liability during the Remaining Warranty Period exceed two million five hundred thousand and NO/100 dollars (\$2,500,000.00).

C. **Time to Remedy Suitability Issue.** Hanson shall commence performance of the repairs and replacements, as required herein, within ten (10) days of receiving written notice of the Suitability Issue. If Hanson fails to commence the repairs and replacements within that time, the City may seek specific performance of this Agreement.

D. **City's Immediate Remedial Action.** Notwithstanding any other provision of this Agreement, if, in the City's reasonable discretion, a Suitability Issue affects the immediate health and safety of the public, the City shall immediately notify Hanson and shall request Hanson immediately repair or replace the Supplied Pipe. If the City notifies Hanson of the Suitability Issue and the need for immediate repair or replacement, and Hanson fails or refuses to immediately commence such repair or replacement of the Supplied Pipe, the City is authorized to take any action it deems necessary to remedy the Suitability Issue at its own expense and subsequently invoice Hanson for the City's costs directly related to the repair and/or replacement of the Supplied Pipe. Hanson shall, within thirty (30) days of receipt of the City's invoice and documentation evidencing such actual repair or replacement costs, reimburse the City for the full invoiced amount. The reimbursement obligation in this paragraph D is subject to the limitations on liability set forth in paragraph III.A and paragraph III.B above. Notice under this section must be given: (1) in writing; or (2) verbally, then immediately followed with a writing.

E. **Limitations on Liability.** **THE CITY ACKNOWLEDGES AND AGREES THAT THE REMEDY OF REPLACEMENT AND REPAIR AS WELL AS THE INDEMNIFICATION PROVIDED HEREUNDER SHALL BE THE SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THIS LIMITED WARRANTY OR ALLEGED DEFECT IN THE SUPPLIED PIPE. HANSON EXPRESSLY DISCLAIMS ANY OTHER WARRANTY THAN THOSE EXPRESSLY SET FORTH HEREIN. ANY IMPLIED WARRANTY OF MERCHANTABILITY WHICH MAY NEVERTHELESS BE AVAILABLE TO THE CITY SHALL BE LIMITED TO THE DURATION OF THIS LIMITED WARRANTY OR THE EXPIRATION OF THE APPLICABLE STATUTES OF LIMITATIONS, WHICHEVER IS SOONER. HANSON EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND WHATSOEVER AS TO THE SUPPLIED PIPE INCLUDING BUT NOT LIMITED TO EXPRESS OR IMPLIED WARRANTIES OF FITNESS FOR PARTICULAR PURPOSES SOLD, DESCRIPTION, OR QUALITY OF THE SUPPLIED PIPE.**

IV. SCOPE OF THIS AGREEMENT

This Agreement only addresses the City's concerns regarding the variance between the Supplied Pipe specifications and the Specified Pipe specifications. The City, therefore, maintains any right afforded the City to reject any other portions of the Project that fail to comply with the Contract or written product specifications included therein.

V. INDEMNIFICATION

SUBJECT TO THE MONETARY LIMITATIONS FOR EACH PERIOD DESCRIBED IN PARAGRAPH III.A AND PARAGRAPH III.B ABOVE, HANSON AGREES TO RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS THE CITY AND ITS

CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED BY SUITABILITY ISSUES RELATING TO THE SUPPLIED PIPE (HEREINAFTER "CLAIMS"). HANSON IS EXPRESSLY REQUIRED TO DEFEND THE CITY AGAINST ALL CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN HANSON IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, THE CITY AGREES TO REIMBURSE HANSON FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY HANSON THAT ARE ATTRIBUTABLE TO THE CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO HANSON WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

THE CITY SHALL HAVE THE RIGHT TO REASONABLY APPROVE DEFENSE COUNSEL TO BE RETAINED BY HANSON IN FULFILLING ITS OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY THE CITY. THE CITY'S APPROVAL MUST BE IN WRITING AND CANNOT BE UNREASONABLY WITHHELD. THE CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE AT THE CITY'S OWN EXPENSE; HOWEVER, THE CITY IS UNDER NO OBLIGATION TO DO SO. ANY REASONABLE REFUSAL TO APPROVE RETENTION OF DEFENSE COUNSEL BY THE CITY IS NOT TO BE CONSTRUED AS A WAIVER OF HANSON'S OBLIGATION TO DEFEND THE CITY OR AS A WAIVER OF HANSON'S OBLIGATION TO INDEMNIFY THE CITY, INCLUDING BUT NOT LIMITED TO, PAYING ATTORNEYS' FEES AND COSTS, PURSUANT TO THIS AGREEMENT. HANSON SHALL SUBMIT TO THE CITY FOR APPROVAL ITS SELECTED DEFENSE COUNSEL WITHIN TEN (10) BUSINESS DAYS OF THE CITY'S WRITTEN NOTICE THAT THE CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT AND THE CITY SHALL APPROVE OF COUNSEL OR DISAPPROVE OF COUNSEL AND IDENTIFY A REASON FOR DISAPPROVAL WITH SPECIFICITY AND PROVIDE A MINIMUM OF TWO SELECTIONS OF COUNSEL ACCEPTABLE TO THE CITY, THE REASONS FOR EACH SELECTION AND RETENTION TERMS FOR EACH

SELECTION WITHIN FIFTEEN (15) BUSINESS DAYS OF THE CITY'S RECEIPT OF HANSON'S SUBMISSION. THE CITY'S FAILURE TO APPROVE OR DISAPPROVE OF COUNSEL IDENTIFIED BY HANSON WITHIN THE FIFTEEN (15) BUSINESS DAY PERIOD SHALL BE DEEMED APPROVAL OF COUNSEL IDENTIFIED BY HANSON. HANSON SHALL RETAIN DEFENSE COUNSEL WITHIN TWO (2) BUSINESS DAYS OF RECEIPT OF THE CITY'S WRITTEN APPROVAL OR THE EXPIRATION OF THE FIFTEEN (15) BUSINESS DAY PERIOD IF THE CITY FAILS TO RESPOND. IF WRITTEN APPROVAL IS REASONABLY WITHHELD BY THE CITY, FOR REASONS SUCH AS, AMONG OTHERS, LACK OF COMPETENCE, LACK OF EXPERIENCE, POOR REPUTATION, CONFLICT OF INTEREST OR ANY OTHER REASONABLE BASIS, HANSON SHALL RETAIN DEFENSE COUNSEL SELECTED BY THE CITY ON TERMS APPROVED IN WRITING BY THE CITY. IF HANSON FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, THE CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND HANSON SHALL BE LIABLE FOR ALL REASONABLE COSTS INCURRED BY THE CITY.

VI. AUTHORITY TO EXECUTE

Each Party hereto represents and warrants that it is fully authorized and empowered to execute and enter into this Agreement upon the terms stated herein, and that the signatory to this Agreement signing on behalf of each Party is fully authorized and legally competent to execute this Agreement as the legal, valid and binding act and deed of such respective Party. Each person who executes this Agreement does hereby represent and warrant to each other Party hereto that he/she/it has the authority to do so.

VII. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the Parties with respect to the matters contained herein and may not be modified except by the mutual written agreement of the Parties hereto.

VIII. COUNTERPARTS

This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

IX. NOTICE

Any notice to be given or to be served upon a Party in connection with this Agreement must be in writing and may be given by certified or registered mail and shall be deemed to have been given and received when a certified or registered letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail, and if given otherwise than by certified or registered mail, it shall be deemed to have been given and delivered to and received by the Party (or such Party's agent or representative) to whom it is addressed. Such notice shall be given to the Parties at the addresses set forth below. Any Party may, at any time

by giving two (2) days written notice to the other Parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

If Notice to Hanson:

Hanson Pressure Pipe, Inc.
300 E. John Carpenter Freeway, Suite 1645
Irving, Texas 75062
Attn: President

With a copy to:

Lehigh Hanson, Inc.
300 E. John Carpenter Freeway, Suite 1645
Irving, Texas 75062
Attn: General Counsel

If Notice to the City:

George Purefoy, City Manager
City of Frisco
6101 Frisco Square Blvd., 5th Floor
Frisco, Texas 75034

With a Copy to:

City Attorney
Abernathy, Roeder, Boyd & Joplin, P.C.
1700 Redbud Blvd., Ste. 300
McKinney, Texas 75069

X. VENUE

This Agreement shall be construed in accordance with the laws of the State of Texas and shall be performable in Collin County, Texas.

XI. SEVERABILITY

A determination by a court of competent jurisdiction that any provision of this Agreement is invalid or unenforceable shall not cancel or invalidate the remainder of that provision or this Agreement, which shall remain in full force and effect.

XII. CONSIDERATION

This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

XIII. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns.

XIV. SOVEREIGN IMMUNITY

The Parties agree that City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

XV. DRAFTING

This Agreement shall be deemed drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumptions or principle that the language herein is to be construed against any Party shall not apply. Headings in this Agreement are for the convenience of the parties and are not intended to be used in construing this document.

XVI. NO THIRD PARTY BENEFICIARY

Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.

XVII. AMENDMENTS AND MODIFICATIONS

This Agreement is the only agreement pertaining to the warranty of the Supplied Pipe between the Parties. No other agreements are effective unless made a part of this Agreement. All amendments to this Agreement must be in writing and signed by all Parties. Any other attempted amendment shall be void.

XVIII. ATTORNEY'S FEES

In any legal proceeding brought to enforce the terms of this Agreement the prevailing party may recover its reasonable and necessary attorney's fees from the non-prevailing party as permitted by Section 271.159 of the Texas Local Government Code, as it exists or may be amended.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written, the effective date of this Agreement.

CITY OF FRISCO

By: _____
George Purefoy, City Manager

HANSON PRESSURE PIPE, INC.

By: _____
Mike Leathers, Senior Vice President

APPROVED AS TO FORM:

By: _____
Claire E. Swann, City Attorney
Abernathy, Roeder, Boyd & Joplin P.C.